

the amount of the installment payment in any month is limited so that the sum of (1) the amount due for a past period (and payable under paragraph (a) of this section) paid in such month and (2) the amount of any benefit due for the preceding month under such entitlement which is payable in such month, does not exceed two times the amount of the beneficiary's benefit payment for the preceding month. In counting the amount of the beneficiary's benefit payment for the previous month, no reductions or deductions under this title are taken into account.

(c) *Exception to installment limitation.* An exception to the installment payment limitation in paragraph (b) of this section can be granted for the first month in which a beneficiary accrues benefit amounts subject to payment in installments if the beneficiary has unpaid housing expenses which result in a high risk of homelessness for the beneficiary. In that case, the benefit payment may be increased by the amount of the unpaid housing expenses so long as that increase does not exceed the amount of benefits which accrued during the most recent period of nonpayment. We consider a person to be at risk of homelessness if continued nonpayment of the outstanding housing expenses is likely to result in the person losing his or her place to live or if past nonpayment of housing expenses has resulted in the person having no appropriate personal place to live. In determining whether this exception applies, we will ask for evidence of outstanding housing expenses that shows that the person is likely to lose or has already lost his or her place to live. For purposes of this section, homelessness is the state of not being under the control of any public institution and having no appropriate personal place to live. Housing expenses include charges for all items required to maintain shelter (for example, mortgage payments, rent, heating fuel, and electricity).

(d) *Payment through a representative payee.* If the beneficiary does not have a representative payee, payment of amounts subject to installments cannot be made until a representative payee is selected.

(e) *Underpaid beneficiary no longer entitled.* In the case of a beneficiary who is no longer currently entitled to monthly payments, but to whom amounts defined in paragraph (a) of this section are still owing, we will treat such beneficiary's monthly benefit for the last month of entitlement as the beneficiary's benefit for the preceding month and continue to make installment payments of such benefits through a representative payee.

(f) *Beneficiary currently not receiving Social Security benefits because of suspension for noncompliance with treatment.* If a beneficiary is currently not receiving benefits because his or her benefits have been suspended for noncompliance with treatment (as defined in § 404.1536), the payment of amounts under paragraph (a) of this section will stop until the beneficiary has demonstrated compliance with treatment as described in § 404.470 and will again commence with the first month the beneficiary begins to receive benefit payments.

(g) *Underpaid beneficiary deceased.* Upon the death of a beneficiary, any remaining unpaid amounts as defined in paragraph (a) of this section will be treated as underpayments in accordance with § 404.503(b).

[60 FR 8146, Feb. 10, 1995]

Subpart F—Overpayments, Underpayments, Waiver of Adjustment or Recovery of Overpayments, and Liability of a Certifying Officer

AUTHORITY: Secs. 204, 205(a), 702(a)(5), and 1147 of the Social Security Act (42 U.S.C. 404, 405(a), 902(a)(5), and 1320b-17); 31 U.S.C. 3716; 31 U.S.C. 3720A.

§ 404.501 General applicability of section 204 of the Act.

(a) *In general.* Section 204 of the Act provides for adjustment as set forth in §§ 404.502 and 404.503, in cases where an individual has received more or less than the correct payment due under title II of the Act. As used in this subpart, the term *overpayment* includes a payment in excess of the amount due

under title II of the Act, a payment resulting from the failure to impose deductions or to suspend or reduce benefits under sections 203, 222(b), 224, and 228(c), and (d), and (e) of the Act (see subpart E of this part), a payment pursuant to section 205(n) of the Act in an amount in excess of the amount to which the individual is entitled under section 202 or 223 of the Act, a payment resulting from the failure to terminate benefits, and a payment where no amount is payable under title II of the Act. The term *underpayment* as used in this subpart refers only to monthly insurance benefits and includes non-payment where some amount of such benefits was payable. An underpayment may be in the form of an accrued unpaid benefit amount for which no check has been drawn or in the form of an unnegotiated check payable to a deceased individual. The provisions for adjustment also apply in cases where through error:

(1) A reduction required under section 202(j)(1), 202(k)(3), 203(a), or 205(n) of the Act is not made, or

(2) An increase or decrease required under section 202(d)(2), or 215 (f) or (g) of the Act is not made, or

(3) A deduction required under section 203(b) (as may be modified by the provisions of section 203(h)), 203(c), 203(d), 203(i), 222(b), or 223(a)(1)(D) of the Act or section 907 of the Social Security Amendments of 1939 is not made, or

(4) A suspension required under section 202(n) or 202(t) of the Act is not made, or

(5) A reduction under section 202(q) of the Act is not made, or

(6) A reduction, increase, deduction, or suspension is made which is either more or less than required, or

(7) A payment in excess of the amount due under title XVIII of the Act was made to or on behalf of an individual (see 42 CFR 405.350 through 405.351) entitled to benefits under title II of the Act, or

(8) A payment of past due benefits is made to an individual and such payment had not been reduced by the amount of attorney's fees payable directly to an attorney under section 206 of the Act (see § 404.977).

(9) A reduction under § 404.408b is made which is either more or less than required.

(b) *Payments made on the basis of an erroneous report of death.* Any monthly benefit or lump sum paid under title II of the Act on the basis of an erroneous report by the Department of Defense of the death of an individual in the line of duty while such individual was a member of the uniformed services (as defined in section 210(m) of the Act) on active duty (as defined in section 210(l) of the Act) is deemed a correct payment for any month prior to the month such Department notifies the Administration that such individual is alive.

(c) *Payments made by direct deposit to a financial institution.* When a payment in excess of the amount due under title II of the Act is made by direct deposit to a financial institution to or on behalf of an individual who has died, and the financial institution credits the payment to a joint account of the deceased individual and another person who was entitled to a monthly benefit on the basis of the same earnings record as the deceased individual for the month before the month in which the deceased individual died, the amount of the payment in excess of the correct amount will be an overpayment to the other person.

[34 FR 14887, Sept. 27, 1969, as amended at 44 FR 34942, June 18, 1979; 47 FR 4988, Feb. 3, 1982; 48 FR 46149, Oct. 11, 1983; 55 FR 7313, Mar. 1, 1990]

§ 404.502 Overpayments.

Upon determination that an overpayment has been made, adjustments will be made against monthly benefits and lump sums as follows:

(a) *Individual overpaid is living.* (1) If the individual to whom an overpayment was made is at the time of a determination of such overpayment entitled to a monthly benefit or a lump sum under title II of the Act, or at any time thereafter becomes so entitled, no benefit for any month and no lump sum is payable to such individual, except as provided in paragraphs (c) and (d) of this section, until an amount equal to the amount of the overpayment has been withheld or refunded. Such adjustments will be made against any monthly benefit or lump sum under